

ownership. Commercial Unit is e square feet in size on floor f, of which g square feet can be converted into h new units (collectively the "Apartment Units"). Collectively, Apartment Units will be allocated i shares of common stock. Corporation arrived at the allocation based on the existing allocations of shares to residential apartments for the rest of the building.

The Corporation will sell newly issued shares of stock ("New Shares") attributable to the Apartment Units to an unrelated purchaser. Corporation represents that the New Shares to be issued with respect to the Apartment Units will be fully paid up in an amount bearing a reasonable relationship to the portion of the value of Corporation's equity in the building and land that is attributable to the Apartment Units.

Ownership of the newly issued shares will entitle the purchaser to a proprietary lease under which the purchaser of the New Shares will be entitled to occupy the Apartment Units either for retail purposes or as residential apartments. The owner of the Apartment Units will at all times have the right, as against Corporation, to occupy the unit for dwelling purposes.

Corporation represents that the local zoning law and building regulations currently permit modification of the Apartment Units to residential use as a matter of right. Corporation submits facts and representations to show that it would be reasonable to convert the Apartment Units to residential use. The size and location of the Apartment Units are such that, with certain modifications, they may be converted into residential apartments.

You have specifically requested the following rulings:

(1) Provided the Corporation satisfies the requirements of § 216(b)(1)(A), (B), (C) and (D) of the Code, neither the issuance of the New Shares to be allocated to the Apartment Units, nor the possible nonresidential use of the Apartment Units, will prevent the Corporation from qualifying as a cooperative housing corporation within the meaning of § 216(b)(1) of the Code.

(2) A person who purchases the New Shares attributable to the Apartment Units for the commercial use of such space will qualify as a "tenant-stockholder" for purposes of § 216(b)(2), provided that the New Shares are fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation's equity in the Building and land that is attributable to the Apartment Units.

Section 216(b)(1) provides that the term "cooperative housing corporation" means a corporation - (A) having one and only one class of stock outstanding, (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation, (C) no stockholder of which is entitled (either

conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and (D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in § 216(a) are paid or incurred is derived from tenant-stockholders.

Section 216(b)(2) provides that the term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Section 1.216-1(e)(2) provides, in relevant part, that in order to qualify as a "cooperative housing corporation" under § 216, each stockholder of the corporation, whether or not the stockholder qualifies as a tenant-stockholder under § 216(b)(2) and § 1.216-1(f), must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reasons of his or her ownership of stock in the corporation. That is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial.

Rev. Rul. 74-241, 1974-1 C.B. 68, provides that, for purposes of § 216(b)(1)(B), the term "apartment in a building" means an independent housekeeping unit consisting of one or more rooms containing facilities for cooking, sleeping, and sanitation normally found in a principal residence.

Rev. Rul. 90-35, 1990-1 C.B. 48, provides that Rev. Rul. 74-241 does not require that a unit presently contain all the facilities normally found in a principal residence in order to constitute an apartment in a building for purposes of § 216(b)(1)(B). A unit will be treated as meeting that definition if: (1) the stockholder is entitled to convert the unit to an apartment, as defined in Rev. Rul. 74-241, solely by reason of ownership of stock in the cooperative housing corporation; (2) the conversion of the unit would be reasonable under all the facts and circumstances, including structural feasibility and costs; and (3) the applicable zoning, building, and fire codes permit both the conversion and residential use of the unit as a matter of right.

Applying the above standards to the facts and representations submitted and subject to the limitation below, we conclude that provided Corporation satisfies the requirements of § 216(b)(1)(A)-(D), neither the issuance of the New Shares to be

allocated to the Apartment Units, nor the possible nonresidential use of the Apartment Units, will prevent the Corporation from qualifying as a cooperative housing corporation within the meaning of § 216(b)(1).

Based upon taxpayer's representations, we note that a person who purchases the New Shares attributable to the Apartment Units will qualify as a "tenant-stockholder" for purposes of § 216(b)(2), provided that the New Shares are fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation's equity in the Building and land that is attributable to the unit which the purchaser is entitled to occupy.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we express or imply no opinion whether Corporation otherwise meets the requirements of § 216.

Specifically, we express or imply no opinion as to whether Corporation meets the requirements of § 216(b)(2) concerning whether the stock bears a reasonable relationship to the portion of the value of the Corporation's equity in the building and land which is attributable to the unit which the purchaser is entitled to occupy.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative. A copy of this ruling must be attached to any income tax return to which it is relevant.

Sincerely,

Joseph H. Makurath
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)